

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of:

Group Art Unit: 3711

Applicant: Terrence Anton

Examiner: Mark S. Graham

Serial No.: 10/697,860

Atty. Docket: 10052-001

Filed: 10/30/2003

Confirmation No. 9768

Title: COURSE LAYOUT AND SCORING METHOD FOR PLAYING A GAME ON  
THE COURSE LAYOUT

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Sir:

APPELLANT'S BRIEF UNDER 37 CFR 41.37

This brief is in furtherance of the Notice of Appeal filed in this application on June 13, 2007. A Fee Transmittal form PTO/SB/17 is transmitted concurrently with this paper to authorize the payment of the fee required for submittal of this brief.

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the Applicant, Terrence Anton.

2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims pending: 1-33, 35-37, 39-48, and 52-64.

Claims cancelled: 31, 34, 38, 49-51.

Claims withdrawn but not cancelled: 1-21 and 52-64.

Claims allowed: none.

Claims objected to: none.

Claims rejected: 22-30, 32, 33, 35-37, and 39-48.

The claims on appeal are 22-30, 32, 33, 35-37, and 39-48.

4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

No amendment was filed subsequent to the final rejection.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

This invention is directed to a “golf” course layout and, more particularly, to a layout and structure of a course that reduces costs and time in constructing a course by utilizing a plurality of pre-designed “blocks” of greens, fairways and teeing areas that can be combined to form a course layout. Although each block is the same physical size, the location and shape of each green, fairway and teeing area within a block can be different by selecting different ones of the blocks from a catalog of blocks.

FIG. 1 illustrates a course layout 10 in accordance with various aspects of the invention that may include a plurality of individual holes 12 arranged to form the course layout 10. One aspect allows for 18 holes to be arranged in an embodiment, as shown in FIG. 1, to form a grid having two columns with eight holes 12 in each column for a total of sixteen holes 12. Respective holes 12 in a column may have substantially parallel longitudinal or lengthwise axes so that the two-column portion of course layout 10 is substantially rectangular. One aspect as shown in FIG. 1 allows for two holes 12 to be arranged proximate a column of holes 12 to form a course layout 10 constituted of 18 holes 12. In this respect, the two holes 12 proximate the column of holes 12 may have a respective longitudinal axis substantially perpendicular to a longitudinal axis of a hole 12 within a column. The exemplary embodiment of course layout 10 in FIG. 1 accommodates playing a game along respective playing routes, illustrated in FIG. 1a, over respective 9-hole layouts.

Independent claim 22 is directed to a course layout 10 as illustrated in FIGS. 1-10. The course layout 10 is provided for players of varying playing ability to play a game using one or more club(s) and a limited flight tennis-like ball. As illustrated in FIGS. 1-2, the course layout 10 includes a plurality of repeated modular holes 12, where each modular hole 12 is contained within a respective rectangular boundary 26 of substantially equal dimensions. The rectangular boundary 26 includes a substantially rectangular playing area 30 located proximate a first end of the rectangular boundary 26. Additionally, a plurality of teeing areas 50,52,54 are located at different positions within the rectangular boundary 26, where the respective positions of the plurality of teeing areas 50,52,54 are unassociated with the varying playing ability of the players. A teeing area 54 is located proximate to a second end of the rectangular boundary 26 and one or more of the plurality of teeing areas 50,52 are located proximate to a first side of the rectangular boundary 26. More particularly, the rectangular boundary 26 includes a fairway 32 positioned between the second end and the substantially rectangular playing area 30, where a portion of the fairway 32 is positioned between a first teeing area 50 and the substantially rectangular playing area 30 and between a second teeing area 52 and the substantially rectangular playing area 30.

As illustrated in FIG. 1, a respective plurality of routes 50a, 52a, 54a lie between the respective plurality of teeing areas 50,52,54 and the rectangular playing area 30. Additionally, as illustrated in FIG. 3, the rectangular boundary 26 further includes a standardized set of irrigation pipes 72a,72b,76 extending along a length of the rectangular boundary 26. As illustrated in FIGS. 4-7, the rectangular playing area 30 is selected from various playing areas 80,90,110,130, where each playing area includes a respective putting green 82,92,112,132, a mounded area 84, 94,114,134 adjacent a first side of the respective putting green 82,92,112,132 and a chipping area 86,98,118,138 proximate a front portion of the respective putting green 82,92,112,132.

Independent claim 39 is directed to a course 10 for playing a golf type game using one or more club(s) and a ball. As illustrated in FIGS. 1-2, the course 10 includes a plurality of repeated modular holes 12 of substantially equal rectangular dimension 26, where each modular hole 12 includes a fairway 32 having substantially the same length. As illustrated in FIG. 1, the course 10 includes a putting green 55 located proximate to a first end of each modular hole 12. As illustrated in FIGS. 1-2, the course 10 additionally includes a plurality of teeing areas 50,52,54 located within the rectangular dimension 26 of each modular hole 12 and positioned with respect to the putting green 55 of the modular hole 12 to define a respective plurality of course-playing routes 50a,52a,54a of varying distances from respective plurality of teeing areas 50,52,54 to the putting green 55. The positions of the plurality of teeing areas 50,52,54 are unassociated with the varying playing ability of players, and one or more of the plurality of teeing areas 50,52,54 are positioned proximate to a second end of the modular hole 12. A playing area 30 surrounds each putting green 55 and includes a mounded area and a chipping area.

6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR  
41.37(c)(1)(vi)

A. Claims 39, 40, 42 and 43 are rejected under 35 USC 103(a) as being unpatentable over Jones (WO 95/02436) in view of Beam (U.S. Pat. No. 4,225,136).

B. Claims 22-28, 30, 32, 33 and 44 are rejected under 35 USC 103(a) as being unpatentable over Jones in view of Beam and Shaw (U.S. Pat. No. 5,451,000).

C. Claims 29 and 45 are rejected under 35 USC 103(a) as being unpatentable over Jones in view of Beam and Shaw, and further in view of Taniguchi (U.S. Pat. No. 5,076,586).

D. Claims 35-37 are rejected under 35 USC 103(a) as being unpatentable over Jones in view of Beam and Shaw, and further in view of Armstrong (U.S. Pat. No. 6,217,458).

E. Claims 46-48 are rejected under 35 USC 103(a) as being unpatentable over Jones in view of Beam and further in view of Armstrong.

F. Claim 41 is rejected under 35 USC 103(a) as being unpatentable over Jones in view of Beam and further in view of Aberg (U.S. Pat. No. 4,413,827).

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

A. Claims 22-30, 32, 33, and 35-37 are Patentable

The Examiner rejected independent claim 22 as being unpatentable over Jones in view of Beam and Shaw. Independent claim 22 recites a plurality of repeated modular holes, where each repeated modular hole is contained within a rectangular boundary of substantially equal dimensions, and a plurality of teeing areas located at different positions within the rectangular boundary. Neither of the Jones, Beam, or Shaw references, either individually or in combination, nor any other cited prior art reference discloses the plurality of repeated modular holes or plurality of teeing areas, as recited in independent claim 22. Accordingly, independent claim 22 is patentable.

The Examiner conceded that Jones fails to disclose the plurality of repeated modular holes of substantially equal rectangular dimension, and cited to Beam to provide this noted deficiency. As conceded by the Examiner on p. 4 of the Office Action, Jones discloses a conventional golf course with different length holes (See FIG. 2A). Jones emphasizes that the golf course is conditioned upon “no hole overlapping with any part of the terrain associated with any other hole.” (p. 7, line 23-24; FIG. 2A) (emphasis added). This teaching that no hole overlaps with any portion of another hole terrain is re-emphasized again in the Jones disclosure (p. 8, lines 17-18). The stated objective of Jones is to equalize the level of difficulty of each hole, in terms of the strokes taken per hole, for players of varying skill level (p. 3, lines 20-24). Jones also discloses positioning two practice drive-teeing areas 27,28 (see FIG. 2B) such that golfers on either practice drive-teeing area 27,28 hit balls into a common target area 29 between the drive-teeing areas 27,28, thereby permitting two driving ranges to be fit in the space of one driving range, and providing a more compact golf facility (p. 8, lines 1-10; FIGS. 2A-2B).

Beam discloses a golf structure with eighteen “portions” 1-18, where “the combination of surface regions, obstacles and terrain of each ‘portion’ is designed to duplicate a particular shot condition found within an approach area in a conventional golf hole.” (Col. 4, lines 60-63)

(emphasis added). Thus, Beam discloses each “portion” 1-18 is “arranged to present a particular approach shot to a green” (ie. the same shot for players of all skill levels) (Col. 3, lines 47-48). As illustrated in FIG. 1 of Beam, several “portions” overlap with the terrain of other “portions,” such as “portions” 3-5, 15-16, and 13-14 having mutually overlapping water terrain, and “portions” 7-8 and 11-12 having mutually overlapping sand terrain, for example (See FIG. 1 legend designating shades of terrain). Additionally, Beam advocates utilizing hedges and tree terrain along the common boundaries of adjacent “portions” (Col. 3, line 10; see portions 1-2 in FIG. 1), thereby introducing additional terrain overlap among adjacent “portions” 1-18.

The Examiner contended that it would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the holes in Jones based upon the teachings of Beam, to provide a more compact course. The Examiner has apparently ignored the teachings of Jones and Beam, as they expressly teach away from such a proposed combination. As discussed above, **the teachings of Jones emphasizes, on two occasions, that the golf course must not include any hole which overlaps with any part of the terrain of another hole**. In stark contrast, Beam is the antithesis of overlapping the terrain of adjacent portions/holes, as it teaches freely sharing water terrain, freely sharing sand terrain, and distributing trees/hedges among adjacent portions/holes. Indeed, one of ordinary skill in the art at the time of the present invention would not modify the holes of Jones based on Beam, to provide a more compact course, as this would require one of ordinary skill in the art to ignore the express teaching away in Jones from overlapping **any part** of the terrain of different holes. As the Examiner is aware, MPEP 2143.04 provides that to establish prima facie obviousness of a claimed invention, all the claims limitations must be taught or suggested by the prior art. As noted in MPEP Section 2142, the tendency to resort to hindsight based on the Applicants’ disclosure is often difficult to avoid due to the nature of the examination process. Nonetheless, such hindsight must be avoided. Legal conclusions of obviousness must be reached on the basis of facts gleaned from the prior art. The Examiner has impermissibly used the Applicant’s disclosure as a roadmap to combine two disjoint pieces of prior art through hindsight reconstruction. Additionally, in *KSR*

*International Co. v. Telefax, Inc.*, 550 U.S. \_\_\_\_ (2007), the Court declared that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” KSR at p. 14. Importantly, the Court further noted “an Examiner **must** identify a reason that would have prompted a person of ordinary skill in the art in the relevant field to combine the elements in the way the new claimed invention does.” KSR Opinion at p. 15 (emphasis added). Moreover, MPEP § 2144 requires that an Examiner must provide a “convincing line of reasoning supporting a rejection.” The Examiner has failed to provide a reason, as required by KSR, that would prompt one of ordinary skill in the art to combine the teachings of Jones with Beam to yield the claimed invention recited in independent claim 22, by completely disregarding the express teaching of Jones. Additionally, the Examiner has failed to provide a convincing line of reasoning to support the rejection of independent claim 22, as required by MPEP § 2144, for the same reasons previously stated.

The Examiner further contended that one of ordinary skill in the art would modify Jones to provide a more compact golf course, however the teachings of Jones discussing the reduction of space for a golf facility were limited to the driving range, as discussed above. The teachings of Jones relating to the golf hole layout were expressly limited to the traditional layout with no hole including any overlapping terrain from another hole. Accordingly, one of ordinary skill in the art would not modify the Jones golf hole arrangement into a more compact arrangement, as **Jones provides no suggestion or motivation to provide a compact golf hole arrangement.** The Examiner has failed to articulate any suggestion or motivation within Jones to provide a more compact golf hole arrangement.

In fact, the Examiner conceded that Beam teaches “downsizing a golf course holes,” (Office Action, p. 5) and, thus even if the suggested combination was obvious, one of ordinary skill in the art would downsize the regular-sized holes of Jones (to resemble the “portions” of Beam), and necessarily remove the multiple teeing areas of Jones, thereby defeating the entire purpose of Jones (ie. to provide multiple teeing areas and multiple playing routes from the



respective teeing area to the green). As the Examiner is aware, MPEP 2143.01(VI) requires that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In *re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

As additional support that one of ordinary skill in the art would be taught away from making the suggested combination, the teachings of Beam discourage the construction of a traditional sized-golf course, such as in Jones: “However, in recent times, the building of conventional golf courses has declined due to rising costs, until today, relatively few full-size courses are being built, particularly in or near metropolitan areas, as the land required is either no longer available in those areas or is too expensive to use for a golf course” (Beam, Col. 1, lines 30-36). The Examiner has proposed that one of ordinary skill in the art who is aware of the Jones teachings of the traditional golf course layout will read the teachings of Beam that discourage full-sized golf course arrangements, and yet somehow find it obvious to modify the full-sized golf course of Jones based upon the teachings in Beam, and end up with a full-sized golf course (ie. multiple teeing areas, etc).

Indeed, the Examiner has failed to provide any convincing line of reasoning that would prompt one of ordinary skill in the art to modify the Jones golf hole arrangement based on the teachings of Beam, to yield the claimed invention as recited in independent claim 22, as required by KSR and MPEP § 2144. Accordingly, independent claim 22 is patentable. Its dependent claims, which recite yet further distinguishing features, are also patentable, and require no further discussion herein.

#### B. Claims 39-48 Are Patentable

The Examiner rejected independent claim 39 as being unpatentable over Jones in view of Beam. Independent claim 39 recites a plurality of repeated modular holes of substantially equal rectangular dimensions, and a plurality of teeing areas within the rectangular dimension of each

modular hole to define a respective plurality of course-playing routes of varying distances from a respective teeing area to a putting green. Neither of the Jones or Beam references, either individually or in combination, nor any other cited prior art reference discloses the plurality of repeated modular holes or plurality of teeing areas, as recited in independent claim 39. Accordingly, independent claim 39 is patentable.

The Examiner conceded that Jones fails to disclose the plurality of repeated modular holes of substantially equal rectangular dimension, and looked to Beam to provide this noted deficiency. As with the rejection of independent claim 22, in rejecting independent claim 39, the Examiner contended that it would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the holes in Jones based upon the teachings of Beam, to provide a more compact course. For the reasons previously stated in the arguments relating to the rejection of independent claim 22, the Examiner has failed to provide a reason that would prompt one of ordinary skill in the art to combine the teachings of Jones with Beam to yield the claimed invention recited in independent claim 39, by completely disregarding the express teaching away in Jones that each hole cannot share any part of the terrain with another hole, as required by KSR. Additionally, the Examiner has failed to provide a convincing line of reasoning to support the rejection of independent claim 39, as required by MPEP § 2144, for the same reasons previously stated.

Accordingly, independent claim 39 is patentable. Its dependent claims, which recite yet further distinguishing features, are also patentable, and require no further discussion herein.

#### C. Conclusion

Accordingly, claims 22-30, 32, 33, 35-37, and 39-48 are all deemed to be patentably distinguishable over the art of record in view of the arguments set forth above with regard to independent claims 22 and 39. Accordingly, all the claims now pending in this application are deemed to be in form for allowance and such allowance is requested.

Serial No. 10/697,860

Atty. Doc. No. : 10052-001

8. CLAIMS APPENDIX - 37 CFR 41.37(c) (1) (viii).

A copy of the claims involved in this appeal is attached as a claims appendix under 37 CFR 41.37(c) (1) (viii).

9. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)

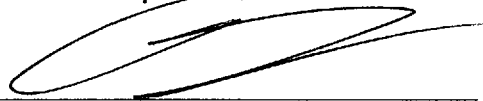
None is required under 37 CFR 41.37(c) (1) (ix).

10. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)

None is required under 37 CFR 41.37(c) (1) (x).

Respectfully submitted,

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## APPENDIX OF CLAIMS ON APPEAL

22. A course layout for players of varying playing ability to play a game using at least one club and a limited flight tennis-like ball, the course layout comprising:

a plurality of repeated modular holes, each of the plurality of repeated modular holes contained within a rectangular boundary of substantially equal dimensions and comprising:

a substantially rectangular playing area located proximate a first end of the rectangular boundary;

a plurality of teeing areas located at different positions within the rectangular boundary, the positions of the plurality of teeing areas are unassociated with the varying playing ability of the players, at least one of the plurality of teeing areas located proximate a second end of the rectangular boundary and at least one of the plurality of teeing areas located proximate a first side of the rectangular boundary;

a fairway positioned between the second end and the substantially rectangular playing area whereby at least a portion of the fairway is positioned between a first teeing area and the substantially rectangular playing area and between a second teeing area and the substantially rectangular playing area;

a standardized set of irrigation pipes extending along a length of the rectangular boundary; and

wherein the substantially rectangular playing area comprising a putting green, a mounded area adjacent a first side of the putting green and a chipping area proximate a front portion of the putting green.

23. The course layout of claim 22 wherein the plurality of repeated modular holes are configured in a rectangular grid comprising at least two columns and at least two rows arranged so that respective longitudinal axes of each of the plurality of repeated modular holes within one of the at least two columns are substantially parallel with each other and so that the substantially rectangular playing area of two adjacent holes of the plurality of repeated modular holes within one of the at least two columns are located at opposite ends of the respective adjacent holes.

24. The course layout of claim 22 wherein the plurality of repeated modular holes are configured with respect to one another so that a longitudinal axis of a first repeated modular hole is substantially perpendicular with a longitudinal axis of a second repeated modular hole.

25. The course layout of claim 22 wherein the plurality of repeated modular holes form a rectangular grid comprising two columns of contiguous repeated modular holes having substantially parallel longitudinal axes and eight rows of contiguous repeated modular holes having substantially coaxial longitudinal axes.

26. The course layout of claim 22, the substantially rectangular playing area further comprising a bunker adjacent a second side of the putting green.

27. The course layout of claim 22, at least one of the plurality of teeing areas located between a midpoint of the rectangular boundary length and the substantially rectangular playing area.

28. The course layout of claim 22 a source of water at least partially within one of the rectangular boundaries and a pump for pumping water from the water source to the standardized set of irrigation pipes.

29. The course layout of claim 22, each of the plurality of repeated modular holes further comprising a plurality of light sources spaced along the rectangular boundary for illuminating the rectangular boundary interior area .

30. The course layout of claim 22, the putting green selected from a group of putting greens having 2,000, 2,500 and 3,000 square foot surfaces areas respectively.

32. The course layout of claim 22 wherein a distance from each of the plurality of teeing areas to the substantially rectangular playing area are substantially the same in each of the plurality of repeated modular holes.

33. The course layout of claim 22 wherein the fairway within each of the plurality of repeated modular holes have substantially the same length; and the putting green within each of the plurality of repeated modular holes is selected from a group of putting greens having predetermined contoured surfaces.

35. The course layout of claim 22 further comprising a three dimensional target having a width and a height substantially greater than the width, the three dimensional target placed on the putting green within each of the plurality of repeated modular holes; and a target attachment material affixed to the three dimensional target.

36. The course layout of claim 35 further comprising a mat and tee assembly for supporting the limited flight tennis-like ball on one of the plurality of teeing areas.

37. The course layout of claim 35 further comprising:  
a cushion between the three dimensional target and the target attachment material.

39. A course for playing a golf type game using at least one club and a ball, the course comprising:

a plurality of repeated modular holes of substantially equal rectangular dimensions, each of the plurality of repeated modular holes comprising a fairway having substantially the same length;

a putting green located proximate a first end of each of the modular holes;

a plurality of teeing areas within the rectangular dimension of each of the modular holes and positioned with respect to the putting green of the modular hole to define a respective plurality of course-playing routes of varying distances from respective ones of the plurality of teeing areas to the putting green, the positions of the plurality of teeing areas being unassociated with the varying playing ability of the players, at least one of the plurality of teeing areas positioned proximate a second end of the modular holes; and

a playing area surrounding each putting green and comprising at least one of a mounded area and a chipping area.

40. The course of claim 41 further comprising:

a recreational area adjacent the plurality of repeated modular holes, the recreational area comprising at least one facility selected from the group of a soccer field, a softball field, a volleyball court, a swimming pool and a set of batting cages.

41. The course of claim 40 wherein the plurality of repeated modular holes and the recreational area are contained within a substantially rectangular area of approximately 50 acres.

42. The course of claim 39 further comprising:

at least two of the plurality of repeated modular holes positioned contiguous to one another within a first row of a grid and having respective longitudinal axes that are substantially coaxial; and

at least two of the plurality of repeated modular holes positioned continuous to one another within a first column of the grid and having respective longitudinal axes that are substantially parallel.

43. The course of claim 42 further comprising:

at least one of the plurality of repeated modular holes adjacent to the grid and having a longitudinal axis that is substantially perpendicular to a longitudinal axis of one of the plurality of repeated modular holes defining the grid.

44. The course of claim 39, each of the plurality of repeated modular holes further comprising a standardized irrigation layout comprising a pair of spaced apart parallel pipes and a set of sprinkler heads attached to each pipe for irrigating an area within each of the plurality of repeated modular holes.

45. The course of claim 44, each of the plurality of repeated modular holes further comprising a standardized lighting configuration comprising a plurality of illumination sources positioned along the respective rectangular dimension to illuminate an area within a respective repeated modular hole.



46. The course of claim 39, wherein the ball comprises a tennis-like ball having an outer cover of a loop-type material, at least one of the plurality of repeated modular holes further comprising:

a three dimensional target having a width and a height substantially greater than the width, the three dimensional target attached to the putting green; and

a hook-type target attachment material affixed to the three dimensional target for capturing the ball.

47. The course of claim 46, the at least one of the plurality of repeated modular holes further comprising:

a mat and tee assembly on at least one of the plurality of teeing areas for supporting the tennis-like ball on the teeing area .

48. The course of claim 47, the at least one of the plurality of repeated modular holes further comprising:

a cushion between the three dimensional target and the target attachment material.

Serial No. 10/697,860

Atty. Doc. No. : 10052-001

EVIDENCE APPENDIX

None.

Serial No. 10/697,860

Atty. Doc. No. : 10052-001

RELATED PROCEEDINGS APPENDIX

None.